

**MAR 15 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ERNESTO ROJAS MIRANDA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-73179

Agency No. A70-963-971

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted March 8, 2006\*\*

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

Ernesto Rojas Miranda, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his second motion to reopen deportation proceedings. We have jurisdiction under 8 U.S.C. § 1252. We

---

\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

review for abuse of discretion the BIA's denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

The BIA did not abuse its discretion in denying Rojas Miranda's second motion to reopen as time- and number-barred under 8 C.F.R. § 1003.2(c)(2), because Rojas Miranda failed to explain why he did not discover the alleged ineffective assistance of his former counsel or how he was prevented from raising an ineffective assistance of counsel claim during the five years that elapsed between the time when he retained new counsel and the time he filed his second motion to reopen. *See id.* at 897 (requiring petitioner to show due diligence to obtain equitable tolling of time and number limits).

**PETITION FOR REVIEW DENIED.**